1952: **File No.** O. Indus Disputes .52

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Legal Deptt.
A **BRANCH**

Subject:— Opinions under the Industrial Disputes Act, 1947

File No. O. Indus Disputes/52.

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C O N T E N T S.

Legal Department File No.O Indus Disputes/52
1952

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Office of the R.L.A.

Industrial Dispute
Industrial Disputes Act, 1947 - R.L.A.'s Opinions Nos. 4381 dated 21-4-1949 and 5095 dated 28-5-1948.

This relates to the dispute between M/s. Larsen and Toubro Ltd. and their sister concerns and the workmen employed under them. The facts are briefly as follows: M/s. Larsen & Toubro Ltd. is a private limited company and is the Managing Agent for four other companies viz. (1) Alu Capsules Ltd. (2) India Crown Cork Co.Ltd. (3) Engineering Construction Corporation Ltd. and (4) the Viking Transport Ltd. on 14th December 1951, all the workers of the Alu Capsules Ltd. at Kandivali resorted to a strike as a protest against company's order requiring a worker who was doing cleaner's job to act as a coolie. Prior to this incident the workers of Alu Capsules Ltd. and India Crown Cork Co. Ltd. had served certain demands on the management and had threatened to go on strike with effect from 25th - December if the demands were not conceded. On 15th December i.e. the day after the workers of Alu Capsules Ltd. struck work, the workers of India Crown Cork Co. followed suit and on 18th December a large number of workers of M/s. Larsen and Toubro Ltd. and their sister concerns went on strike. It appears that after the strike of the workers of Alu Capsules Ltd. the management called upon the strikers to appear for individual inquiry on 19th December. At this the Union of Employees which is a registered union intervened but without success. On 17th December the management dismissed all the workers of the Alu Capsules and the India Crown Cork Co. on the ground that the strike was illegal. The strikers in the other three companies were also called upon by the management to resume work by 27th and on their failure to do so, they were dismissed.

2. The Union of the workers has now called off

the strike and advised the workers to resume work. But the company is not prepared to take back all the workers. It is prepared to take back only those workers whose vacancies have not been filled and who are prepared to sign an undertaking in the form prescribed by the company. As the Union's demand for reinstatement is not being accepted by the Company it has approached Government with a request to get them reinstated and to refer the issue of wages for the strike period to adjudication. The Company is opposed to these demands.

3. The Labour and Housing Department has raised three issues in this connection and they are :

(1) Whether the alleged strike in all the five concerns was a 'strike' as defined in the Industrial Disputes Act, 1947 or whether it was absence without leave as contended by the Company and if the former, whether it was legal or illegal;

(2) whether the dismissal of the workers on the alleged strike was proper and legal; and

(3) whether it is legally feasible to grant the workers' request for adjudication.

4. The term 'strike'm is defined in section 2(q) of the Industrial Disputes Act, 1947 and means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment. It is obviousthat the cessation of work in the Alu Capsules Ltd. and in the other concerns was brought about by the workers who were acting in combination or in concert and in the circumstances the cessation or refusal to work was a strike within the meaning of that term in the Industrial Disputes Act, 1947 (See also R.L.A.'s opinion No. 4281 dated

dated 21-4-1949). It is true that the strike in the concern other than the Alu Capsules Ltd. was not in relation to an industrial dispute but was what is called a sympathetic strike But it was all the same a strike within the meaning of that term as defined in the Act (vide also the decision of the Labour Appellate Tribunal in Strike Colliery Ltd., vs. South Karanpura Coal Mines Workers' Union, Labour Law Journal, July, 1951, p.62). Under the provisions of sections 22 to 24 certain strikes and lock outs are prohibited; but in the present case the concerns were not public utility concerns, nor was any conciliation or adjudications proceeding pending when the workers resorted to strike. The strike, therefore, did not offend against any of the provisions of the Industrial Disputes Act, 1947 and must, therefore, be deemed to be legal. As the workers were on a legal strike their absence could not have been treated by the Company as absence without leave. The contention of the Company is not correct.

5. The next question for consideration is whether the dismissal of the workers during the strike was legal and justified. It appears that the company first took this action on the ground that the strike was illegal. The Company has now resiled from that position and now contends that the strikers were dismissed on the ground of having absented themselves without leave and that this action was in accordance with the model standing orders by which the company is guided pending certification of the company's own standing orders submitted to the Commissioner of Labour. As pointed out by the Labour and Housing Department the Company's own standing orders are not yet certified and in the circumstances the Company cannot act according to the Model Standing Orders which do not apply to it. Further as the workers were absent being on a legal strike, it is doubtful how far the company can plead that they were absent without leave. Moreover the Company does not appear to have followed the procedure and the rules laid down in the Standing Orders nor has it based its dismissal orders on the ground now alleged. In the

circumstances, prima facie the dismissal orders are illegal and the stand taken by the Company is not justified.

6. The last question is whether the dispute can be legally referred to adjudication. Under section 10(1)(c) of the Industrial Disputes Act, 1947, if any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing, refer the dispute to a Tribunal for adjudication. To be able to refer the dispute for adjudication, there must, therefore, be an existing or apprehended industrial dispute. That term is defined in clause (k) of section 2 of the Industrial Disputes Act, 1947 and means any dispute or difference between employers and employers, or between employers and workmen or between workman and workmen which is connected with the employment or non-employment, or the terms of employment or with the conditions of labour of any person. This definition is very wide and there can be no doubt that in the present case there is an industrial dispute on account of the Company's refusal to take back dismissed workers (vide H.L.A.'s opinion No.5095 dated 20-5-1948). The Company's contention which they have tried to support with the opinion of Shri J.B. Kenge that there is no industrial dispute as the workers are dismissed is not correct. A workmen discharged during dispute still remains a workmen (vide section 2(s)) and a dispute regarding reinstatement of a dismissed employee is an industrial

dispute....

dispute (see Western India Automobile Association vs. Industrial Tribunal Bombay, 1949 F.C.R.321 and Roberts M'Clean & Co. vs. A.T. Das Gupta, 1949 F.C.R. 361). Further, in Shamnagore Jute Factory Ltd. vs. F.M. Hoque & another (1949 F.C.R.305) it is held by the Federal Court that a dispute relating to payment of wages during the period of lock out is an industrial dispute and applying the principle laid down in that decision, the workers' claim in the present case for wages for the strike period would be an industrial dispute apart from the propriety or legality thereof. There would, therefore, be no legal objection to refer the dispute to adjudication.

Sgd. J.R. Dhurandhar
1/2
for Remembrancer of Legal Affairs.

U.R. to L. & H.D.No. 1655, dated 1st February, 1952

RVV
16/6
4 cs.

Office of the R.L.A.

The case was discussed with the Secretary, Labour Department, and it was agreed that the R.L.A.'s opinion should at this stage be confined only to one point, namely, whether the Mills which vest in the Custodian of the State can be deemed to be an industry carried on by or under the authority of the Central Government within the meaning of section 2(a)(i) of the Industrial Disputes Act, 1947.

2. That section defines an "appropriate Government" to mean in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government, the Central Government. The Mill in this case admittedly vests in the Custodian who is an officer appointed under section 6(1) of the Administration of Evacuee Property Act, 1950. No doubt he is appointed by the State Government, but that appointment is made in consultation with the Custodian-General who in his turn is appointed by the Central Government. Under section 6(2) of the Act the Custodian discharges his duties under the general superintendence and control of the Custodian-General. Under section 54 of the Act, the Central Government may for the purpose of regulating the administration of any property which has vested in the Custodian under the provisions of this Act pass such order or direct such action to be taken in relation thereto as in its opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act. Authority is merely power to get things done. The provisions of section 54 clearly show that the Central Government exercises full authority over the Mill in question. Even from the point of view of ownership it must be said that the property in the Mill vests in the Custodian who is an officer under the Act and is controllable by the Custodian-General and by the Central Government and, therefore, must be treated as an officer of the Central Government, though he may in

fact....

fact be appointed by the State Government. In effect, therefore, any other proprietary interest or ownership or any other agency of management excepting that of the Central Government is excluded under the provisions of the Act. The Central Government is thus the de facto owner of the mill at present and the mill is being run under their directions. In these circumstances I am disposed to hold that the Mill would be an industry carried on under the authority of the Central Government.

3. In this view it would be unnecessary to answer the second question, since the State Government would no longer be concerned with the dispute, which, moreover may be dealt with as and when it arises, there being, as was reported to the P.L.A., every prospect of an amicable settlement between the parties concerned.

Sgd. P.N. Lal
9/5
Remembrancer of Legal Affairs.

U.O. to L. & H. Deptt. No.7813, dated the 9th May 1952.

KVV.
16/6
4 cs.

Office of the R.L.A.

An industrial dispute in respect of certain matters between the Tata Chemicals Limited and the Tata Chemicals Kamgar Sangh, Mithapur, was referred for adjudication in the year 1951 to a tribunal under section 10(1)(c) of the Industrial Disputes Act, 1947. During the pendency of that adjudication conciliation proceedings were also being conducted in respect of other matters before a Conciliation Officer under section 12. A settlement was reached between the parties in consequence of which the demands before the tribunal were withdrawn and the settlement was recorded before the Conciliation Officer on 30th June 1951. In accordance with the terms of this settlement (agreement) certain kinds of employees were granted an increase in their basic wage and also in the dearness allowance. Others were given dearness allowance at an increased rate. In view of these increases the employees withdrew the remaining demands mentioned in the original notice of strike dated 14th May 1951 and also the demands referred for adjudication. Then comes the fifth term of the agreement which is the subject-matter of the present reference to the R.L.A. It reads as follows:-

> "The employees hereby give an undertaking that they shall not make any fresh demands that would increase the financial burden of the Company, during the period for which this Agreement remains in force."

The agreement according to its terms was to remain in force till 30th September 1952.

2. Recently, on 6.4.1952 the Tata Chemicals Kamgar Sangh served a 14 days' strike notice on the Tata Chemicals Limited. The demands appended to this notice include the question of discharge notice served by the Company upon two employees, warning given to another employee, the question of wages to the Giant Limekiln workers, and finally two other demands (Nos. 2 and 4) which concern the abolition of the contract labour

system and the permanent absorption of workers employed by contractors and the modification of the Company's circular captioned "Bonus for 1950-1951". The modifications suggested in the circular refer to details of various allowances and the percentages of bonus to be calculated etc. Subsequently, the workers have gone on a strike with effect from 21st April 1952. The Conciliator took notice of the matter, but no settlement could be arrived at by him. The Company contend that the strike is illegal under section 23(c) of the Industrial Disputes Act, 1947, in view of the fact that under clause (5) of the Agreement referred to in paragraph 1 above, the Union had given an undertaking that it will not make on the Company any fresh demand that would increase the financial burden of the Company during the period for which the agreement was to remain in force, namely, 1.1.1951 to 30.9.1952, and that demands Nos.2 and 4 made in the strike notice are in contravention of that clause. The Company, therefore, invite Government to declare the strike illegal. The Secretary, Labour Department, has observed that the term of the agreement quoted above does not mean abandonment of an existing issue in dispute, but abandonment of the right to raise a future demand; and that this seems against the spirit of labour laws and rights. He, therefore, requests the R.L.A. to advise whether clause (5) of the agreement is binding on the workers.

3. It may be assumed for the purpose of this opinion that the agreement dated 30th June 1951 was a settlement as defined in the Industrial Disputes Act under section 2(p) and as contemplated by section 23(c). The question for consideration is whether term (5) of that settlement is binding upon the workers, and on that footing whether its

violation would attract the provisions of section 23(e).

4. The general law regarding agreements made in collective bargaining is quite clear. Courts are generally prompted by the viewpoint that it is in the interest of good government that Labour Unions and employers should be afforded reciprocal protection in their lawful contractual undertakings, and accordingly it has also been held that considerations exist in the Unions' undertaking not to ask for wage increase during the term of the agreement. See Ludwig Teller's Labour Disputes and Collective Bargaining, Volume 1 p.486. Had the matter been one of mere contractual law, an agreement that the employees give an undertaking that they shall not make any fresh demands that would increase the financial burden of the company during a particular period would have been held legal in view of the fact that this undertaking was being given in consequence of an immediate pecuniary benefit to the workers of diverse kinds.

5. However, the question has to be judged not from the point of view of contract law, but in relation to the laws of the land in the matter of workers' rights involved in industrial disputes and their settlement by a machinery provided by statutes for the purpose. The question has been debated in the Australian Courts. In the first case on the subject, J.C.Williamson Limited v. The Musicians' Union of Australia (1912) 15 C.L.R. p.636, the majority of the Court no doubt held that an agreement made by an organization of employees with an employer that it would not make any further claims on the employer in relation to industrial matters for a period of three years was valid and could be enforced by the Courts. Isaacs J. gave a dissenting judgment with the reasoning of which I am respectfully inclined to agree,

especially in view of the fact that a subsequent decision of the Court follows Isaacs J's view and over-ruled the Musicians' case. I would like to quote certain observations from Isaacs J's dissenting judgment in the Musicians' case which appear to me to be quite pertinent:

> "Employers pressed by urgent considerations of present necessity might have to agree to terms for three or thirty years - for at common law there is no time limit; and then according to the contention of the plaintiffs (the employers) it is intended by the Legislature that the Court is to have jurisdiction, as in ordinary cases of private agreements, to look to the strict words of the bond, and, notwithstanding any change of circumstances or the present injustice of the terms, the violence of the dispute, or the dislocation of industry, may hold the parties down to their textual promise and prevent them from approaching the tribunal specially erected under the authority of the Constitution to investigate the cause, and settle the disputes and maintain public industrial peace..... Consequently, no matter what the public havoc may be in any industry, let there be only a negative covenant, and then, on the plaintiffs' argument, this Court must stand as a barrier between the parties and the Court of Conciliation and Arbitration. ..... To my mind, that is entirely wrong and inconsistent, not only with the whole scope of the statute, but also with what has been said by learned Judges on prior occasions."

Isaacs J. quoted with approval the observations of O'Connor J. to the following effect:

> "The questions at issue being, not as to the breach or observance of existing contracts, but as to the removal of grievances which had grown up under them, and as to the best means of securing by new agreement or understanding other and better conditions for the future.' But if grievances have grown up under them now, can it be suggested that an injunction is possible to prevent redress?"

Isaacs J. pointed out that public interest was the animating impulse of legislation on the question of industrial disputes, and it was not intended for the benefit of either or both of the disputing parties but primarily in the interest of peace and the welfare of the community. His conclusion was that any agreement

which stultifies the law on the subject by withdrawing disputes in advance from the tribunals set up under that law was opposed to public policy. This minority view was later on confirmed by the High Court of Australia in the case of Australian Agricultural Company and others v. Federated Engine-Drivers and Firemen's Association of Australia (17 C.L.R. 261.) which in terms over-ruled the decision in Musicians' case. The ratio of that decision has again been put neatly by Isaacs J. by reference to an earlier decision as follows:-

> "It cannot be within the power of one of the parties to destroy the rights of the general community by a bargain with the other party to suppress the tribunal, should the occasion for its interposition arise. No contract that purports to do that either directly as in the present instance, or indirectly by interposing any term in the nature of a condition precedent, or in any other way, can bar the entrance to the arbitration tribunal, commissioned by the highest authority to maintain the industrial peace of Australia."

Such contracts have, therefore, been held as opposed to public policy.

6. The principle underlying these decisions would apply with equal force to the facts of the case. Apart from the question whether the employees may be generally willing to sign almost any agreement in view of some proffered immediate advantage, an undertaking that no fresh demand would be made which would increase the financial burden on the company in practice would amount to waiving the right to raise any disputes. The undertaking is couched in such wide language that it is hardly conceivable that any demand which workers would normally make would escape out of its meshes. Had the undertaking been confined to the precise subject-matter of the dispute in which the agreement was reached, the position may have been different, having regard

especially to the short interval of time for which the agreement was to remain in force. But by giving the undertaking the employees have signed away their right to raise any dispute of an economic nature and thereby precluded themselves from approaching the tribunals set up under the Industrial Disputes Act to which ordinarily such disputes would have been referred. In my opinion the principle adopted by the Australian Courts is the correct principle on the subject, and I am, therefore, inclined to hold that this particular term is opposed to public policy and is not binding on the workers; and that this term would not come in the way of any reference being made to a tribunal if otherwise such a reference is permissible.

Sgd. P.M. Lad
17/5
Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No.8273, dated 17th May 1952.

KVV.
16/6
4 cs.

Office of the R.L.A.

In the concluding part of his opinion No.8273, dated 17th May 1952, the R.L.A. observed as follows:

> "By giving the undertaking the employees have signed away their right to raise any dispute of an economic nature and thereby precluded themselves from approaching the tribunals set up under the Industrial Disputes Act to which ordinarily such disputes would have been referred. In my opinion the principle adopted by the Australian Courts is the correct principle on the subject, and I am, therefore, inclined to hold that this particular term is opposed to public policy and is not binding on the workers; and that this term would not come in the way of any reference being made to a tribunal if otherwise such a reference is permissible."

2. The Minister for Labour feels that the R.L.A. has not considered the words "during the period for which this agreement remains in force" and the fact that it can be terminated by proper notice, and, therefore, there is no absolute bar. For these reasons he thinks that the opinion will have to be reconsidered when occasion arises. The papers are now shown to the R.L.A.

3. The points to which attention has been drawn by the Minister for Labour, namely, the words "during the period for which this agreement remains in force" and the fact that it can be terminated by proper notice, had received due consideration. Neither of them affects the legal position. The words "during the period for which this agreement remains in force" occurring in clause (5) must be construed with reference to clause (7) which provides that the agreement was to remain in force till 30th September 1952. Similarly, the fact that the agreement could be terminated by proper notice has reference to section 19(2) of the Industrial Disputes Act, 1947. Both these considerations were present in the Australian Cases on which the R.L.A. relied. Thus in the case of Australian Agricultural Co. v. Federated Engine Drivers and Firemen's

Association of Australia (17 C.L.R. p.261), clause 16 of the agreement provided that it shall continue in force for a term of three years from the date of making thereof. Similarly, that agreement purported to be made pursuant to the Commonwealth Conciliation and Arbitration Act, 1904, section 79 occurring in Part VI of which provides for rescinding or varying the agreement by another agreement and section 81 of which is on the same lines as section 19(2) of the Industrial Disputes Act, 1947. Referring to these provisions it was observed by Higgins J. as follows:

> "None of these results follow if the agreement is to be treated as operating outside Part VI. ..... To my mind, the agreement, on its face, was one impossible of performance from the first, and, as such, void. It never could be filed(legally), it never could be operative, under Part VI."

These observations would apply equally to the case under consideration. The real point to remember is this that inasmuch as the agreement sought to oust the jurisdiction of the judicial machinery established for the purpose, it was void and inoperative, and, therefore, the fact that the agreement was of a limited duration or that its duration was also fixed statutorily to a limited time does not make any difference to its initial invalidity. Every agreement by which a party is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals is void under section 28 of the Indian Contract Act. "Absolutely" in this context does not mean for ever; The restriction must be absolute in its nature as it was in the present case; for, it is difficult to conceive of any disabling restriction more sweeping in nature. Once the agreement comes within that class, the fact that it could be terminated or that its duration was limited makes no difference to its character; and Courts will refuse to

enforce it and will hold that notwithstanding its terms the ordinary remedy provided by law is available to the parties concerned. In the case of Czarnikow v. Roth, Schmidt and Company ((1922) 2 King's Bench 478) it was held by the Court of Appeal in England that a particular rule of an Association and the agreement embodying it were contrary to public policy and invalid, as involving an ouster of the statutory jurisdiction of the Court under the Arbitration Act. Lord Justice Scrutton said:

> "I am also of opinion that the latter part of rule 19 is unenforceable, and that parties are entitled in spite of it to apply to the Court, and in a proper case obtain from it a special case on matters of law."

In the case under consideration the same principle would apply, and that is why the R.L.A. held that the offending term would not come in the way of any reference being made to a Tribunal if otherwise such a reference is permissible.

Sgd. P.M. Lad
3/7
Remembrancer of Legal Affairs.

U.R. to Labour & Housing Deptt. No.632-Confl. dated 3rd July 1952.

KVV.
16/6
4 cs.

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is whether the Danish Consulate at Bombay is amenable to the provisions of the Industrial Disputes Act, 1947.

2. The view seems to have been taken on the authority of the decision of the Bombay High Court in the Province of Bombay vs. The Western India Automobile Association (61 Bom.L.R.58) that the Consulate comes within the definition of industry. The definition of 'industry' reads as follows: 'Industry' means any business trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or vocation of workmen. It is, no doubt, true that the criterion of profit need not be the guiding principle in deciding whether a particular undertaking or calling is an industry. That was all that was held by the Bombay Hight Court in the case cited before, although the Supreme Court did not think it necessary to make any pronouncement on the subject. However that may be, that authority is quite clearly distinguishable. It was assumed in that case -- and rightly assumed -- that the W.I.A.A. was an undertaking or a calling. It cannot possibly be maintained that a Consulate is an undertaking and it can never be called a 'calling the ordinary meaning of which is'a vocation or a profession'. In my opinion,therefore, the Danish Consulate cannot be regarded as an industry for the purposes of the Industrial Disputes Act, 1947. This opinion does not leave the employees without any remedy. He can pursue his ordinary remedy <u>and</u> his employer namely, the Danish Consul in a competent Court of law.

Sgd. P.M. Lad
26/5
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No.8820, dated 27th May 1952.

KVV.
16/6
4 cs.

Office of the R.L.A.

Conciliation Powers of Conciliation Officer to make a failure report Industrial Disputes Act, 1947. S.12.

Government propose to issue the following instructions for the Conciliation Officer:

"In cases where the workmen resort to a strike, sit down strike, "go slow" tactics, or so called "satyagraha" while a dispute is pending in conciliation, the Conciliation Officer should inform the Union or workmen that the conciliation proceedings under the Industrial Disputes Act, 1947, would be terminated with a failure report, settlement being made impossible on account of the coercive behavior of the workers. He should accordingly send a failure report to Government in pursuance of section 12(4) of the said Act specifying the coercive act as the reason which made settlement impossible." The R.L.A. is requested to advise whether there would be any objection to issue any aforesaid instructions.

The powers exercisable by a Conciliation Officer under section 12 are neither judicial nor quasi judicial. There would, therefore, be no legal objection to Government issuing instructions to the Conciliation Officer to facilitate the discharge of his functions under section 12. Under section 12 sub-section (2) the Conciliation Officer is required to try to induce the parties to come to a fair and amicable settlement of the dispute. Under sub-section (3) he is to report that such a settlement is reached. Under sub-section (4) if no such settlement is arrived at, the Conciliation Officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in

his opinion, a settlement could not be arrived at. It is, therefore, apparent that it is for the Conciliation Officer to decide whether a settlement under the circumstances is or is not possible and whether it is worthwhile to proceed with the investigation to induce a settlement between the parties. If the workers resort to a strike, sit-down strike, go-slow tactics or so called Satyagraha, it would mean that they are not in a mood to compromise and come to a reasonable settlement and by threat of coercive measures they want to induce a settlement. Consequently it would be open to a Conciliation Officer to conclude that no settlement is possible when the workers resort to a strike, sit-down strike, go-slow tactics orx so called Satyagraha. There appears, therefore, no legal objection to issue the instructions as proposed by Government.

Sgd. P.K. Lad
1/8
Remembrancer of Legal Affairs.

U.R. to L. & H.D. No.12836, dated the 2nd August 1932.

KVV.
16/6
4 cs.

Office of the R.L.A.

Although the question of the recognition of the Sabha was a demand in respect of which Government declined to make a reference, it seems that the employer and the employees reached an agreement about matters in which this demand, which was in dispute, was also included, and that is how the Tribunal came to include it in the award. The recognition of the Sabha was thus an integral part of the award and, therefore, its omission from the award at this stage may give rise to the complaint that the rest of the award will also fall through. The question whether Government has a discretion to refuse to make a reference about any individual matter in dispute is also not free from doubt (vide R.L.A's opinion No.825-Secret dated the 21st August 1952). Moreover, since the period of 30 days has elapsed from the publication of the award, under section 17A(1) of the Industrial Disputes Act, 1947, it has become enforceable; and it is again doubtful whether the Tribunal can now be invited to delete an integral term of the award. The question of principle raised in the note recorded by the Minister of Labour may be taken up in some other matter where it may acutely arise for determination.

Sgd. P.M. Lad
5/9
Remembrancer of Legal Affairs.

U.R. to D.D. No.887-Confl., dated the 6th September 1952.

KVV.
12/8
4 cs.

Office of the E.L.A.

Under clause (a) of section 18 of the Industrial Disputes Act, 1947, an award made by the Industrial Tribunal is binding on all parties to the industrial dispute. Clause(c) provides that where a party referred to in clause (a) is an employer, then the award shall be binding also on his heirs, successors or assigns in respect of the establishment to which the dispute relates. It is true that in this case Shri Patharkar alone was made a party to the dispute as representing the Talkies. It appears that when Shri Patharkar purchased the theatre from Messrs. Dawood Mahomed, he was both the owner of the theatre and was also in charge of the management thereof. Thereafter and during the pendency of the proceedings before the Industrial Tribunal, actually on 19th March 1951, he transferred the management of the theatre to Shris A.R. and N.J. Tamboowala. These persons (in so far as the authority to employ the staff etc. vested in them) can, therefore, be deemed to be the successors of Shri Patharkar within the meaning of clause (c) of section 18; and the terms of the award would be binding on them. (See Rai Charan Mandal vs. Biswa Nath Mandal, 20 C.L.J. 107, where the general principle of devolution of interest pendente lite is considered). In this view it will be possible to hold Tamboowalas responsible in respect of both the claims raised by the employees.

Sgd. P.M. Lad
10/9
Remembrancer of Legal Affairs.

U.R. to D.D. No.14326-A dated 11th September 1952.

KVV.
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4 cs.

Legal Department.
N.I. No. 4190, dt. 17-10-52.

Submitted with reference to the D.D. note at pp. 55-56 ante.

2. The Tribunal's award in the dispute between the New Jack Printing Works Ltd., Bombay and the workmen employed under it was published in the B.G.G. under G.N., L. & E.D. No. 638/48, dated 24-7-50. Thereafter difference arose between the parties with regard to the interpretation of the directions contained in the award on the demand of overtime. And the Tribunal directed 42 hours in the week to be working hours and that overtime after those hours and uptil 48 hours should be paid at the rate prescribed in the Factories Act, 1948. As the wage scales prescribed by the Tribunal were correlated to a week of 42 working hours and as these wage scales were granted with retrospective effect from 1-1-1950, the Union interpreted that the workmen were entitled to overtime at the rate prescribed in the award from 1-1-1950, while the Co. stated that the overtime should be paid from the date on which the award became enforceable. The Tribunal to which the matter was referred, upheld the Union's view and a notification publishing the supplementary award has been put up. The award contains discussion on the point whether such reference to the Tribunal is legal and valid and also whether such a reference can be made after the award is terminated. Objections raised in this behalf by the Co. were overruled by the Tribunal; it, however, observes that it would be for Govt. to consider whether in making a reference under rule 20-A of the Industrial Disputes (Bombay) Rules, 1947, it would not be better to use a form of the kind used when making a reference for adjudication under sub-section (1) or (2) of section 10 of the Act. The Deptt., therefore, wants to know whether the form of reference under rule 20-A of the Indus-

trial Disputes (Bombay) Rules needs any modification.

Legal Department

As already pointed out in R.L.A.'s opinion No.7440, dated the 6th August 1950 references under rule 5 and rule 20A are different. The former need to be notified whereas the latter do not, and may properly be made by a letter.

Sgd. B.P. Dalal
29/10
Additional Deputy Secretary to Government.

U.R. to Development Department, No.17998/B
Dated the 30th October 1952.

KVV.
18/6
4 cs.

Office of the R.L.A.

Labour Dispute between Maharaja of Kolhapur and his servants.

Industrial Disputes Act, 1947. and Agreement of Merger.

R.L.A's opinions No. 8731 dated 27-8-1947. No. 10641 dated 13-11-1948. No. 806 dated 18-1-1950 & No. 6110 dated 22-4-1952.

Two questions arise upon this reference. The first concerns the claim of immunity which may be made by His Highness the Maharaja of Kolhapur. In R.L.A.'s opinion No.806 dated the 18th January 1950 it was pointed out with reference to a case concerning the Maharaja of Baroda that as an employer he will be immune from the jurisdiction of any court or tribunal as under the merger agreement he retains all personal privileges enjoyed by him before the 15th August 1947. This position was reiterated in this Kolhapur case in Additional Secretary's opinion No.6110 dated the 22nd April 1952. Article V of the Kolhapur merger agreement provides that all the members of His Highness's family including Her Highness the Maharani Saheba shall be entitled to all the personal privileges, dignities and titles enjoyed by them, whether within or outside the territories of the State, immediately before the 15th day of August 1947. In the Memorandum of the personal privileges of the Rulers of the merged and integrated States it is stated that their list of rights and privileges specified in the revised memorandum should be treated as illustrative only. The rights and privileges not covered by this memorandum should also be given due consideration by the Provincial and Union Governments concerned. Item (21) of that memorandum deals with immunity from the process of courts of law and reads as follows:-

> "It would be for the Courts to decide whether a Ruler is immune from Civil and Criminal process and if so to what extent and under what circumstances. The Government of India have no doubt that such immunity as the Rulers enjoyed before the 15th of August 1947 in British Indian Courts would be regarded as a personal privilege of the Rulers and in view of the express provision in the merger Agreements and Covenants, itx will continue to be granted to them by all courts in India. The Government of India do not consider that any statutory provision is necessary."

The Government of India now say in their letter No. F.28(45)-PE/52 dated the 28th October 1952 that the

guarantee....

guarantee regarding personal privileges appearing in the merger agreement does not confer upon the Ruler complete immunity from the jurisdiction of courts; that the above-quoted paragraph (21) of the Memorandum explains the nature and extent of immunity from local jurisdiction and section 87B of the Code of Civil Procedure, 1908, is enacted to give protection to the Rulers so far as it was guaranteed; and that the present position, therefore, is that section 87B of the Code of Civil Procedure, 1908, regulates the immunity in civil matters.

I find great difficulty in subscribing to this view. As has already been made clear, the memorandum itself is illustrative and not exhaustive. What must prevail is the actual term of the agreement which has already been quoted. Neither the memorandum nor the Code of Civil Procedure can supersede that term of the agreement. The Code of Civil Procedure, moreover, concerns itself only with a particular kind of immunity, and the procedure therefor in respect of suits in civil courts; and it will be observed that the provision is of the same nature as was contained in the Code even before. The utmost that can be spelt out of the provision of section 87B of the Code of Civil Procedure is that suits against Rulers of former Indian States will be governed by the procedure laid down therein. That provision cannot be construed to mean that what is not contained therein has been now denied to the Rulers despite the merger agreement. Attention is particularly invited to the words "whether within or outside the territories of the State" occurring in Article V of the Merger Agreement. It is presumed that in the Kolhapur State itself no such adjudication could have been sought against the Maharaja by the present class of servants. If that be so, in terms of the memorandum itself, this will be a personal privilege which must continue even after the merger. That privilege cannot be said to have been abrogated by section 87B of the Civil Procedure Code; and apparently there is no other

provision....

provision of law which abrogates it in so far as it is applicable to this case. I feel hesitation, therefore, in accepting the opinion now sent by the Govt. of India in this matter. If necessary, the question may be referred to the Advocate General for his final opinion.

The second question arises on the assumption that no immunity can be claimed by the Maharaja of Kolhapur. On that assumption there should not be such difficulty in making a reference. Attention is invited to R.L.A's opinion No.10641 dated the 13th November 1948, wherein it has been held that the Act will not apply to domestic servants; but that otherwise the expression "business" in the definition of "industry" need not be given a restricted meaning and confined to a business carried on for trade or profit (see R.L.A's opinion No.8731 dated 27th August 1947, and Province of Bombay v Western India Automobile Association, 51 Bom.L.R. 58, confirmed in appeal by the Fenderal Court in Western India Automobile Association v. Industrial Tribunal, 51 Bom.L.R.894). As pointed out by the Chairman of the Huzur Khasgi Nokar Sangh in his letter dated the 21st April 1952, the Union represents persons who are peons, clerks, farm-labourers, coachmen, compounders, store-keepers, electricians, etc., and it will, therefore, be difficult to treat all of them as domestic servants. It is, therefore, possible to say that the dispute between these employees and the Maharaja of Kolhapur may be an industrial dispute. Furthermore, it has been alleged that the Maharaja of Kolhapur is carrying on business with the help of these servants. The dispute, therefore, can be treated as one falling under the Industrial Disputes Act, 1947.

Sgd. P.M. Lad
29/12
Remembrancer of Legal Affairs.

U.R. to D.D. No.28055/A dated the 30th December 1952.

KVV.
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